

Department of Homeland Security

U.S. Customs and Border Protection

Notification and Review Procedures for Certain Deaths and Deaths in Custody

May 26, 2021

EXECUTIVE SUMMARY

This memorandum provides policy and procedures to be followed for notifications to internal program offices related to the death of any person in the custody of U.S. Customs and Border Protection (CBP), the Department of Homeland Security (DHS), the DHS Office of Inspector General, Congress, the public, international partners, and the Federal Death in Custody Reporting Program (FDCRP) within the U.S. Department of Justice (DOJ). This memorandum also establishes policies and procedures to be followed for notifications related to reportable deaths associated with individuals not in custody.

The policies and procedures set forth in this memorandum ensure compliance with CBP's statutory obligations under the Death in Custody Reporting Act (DCRA) (42 U.S.C. Section 13727). The DCRA requires CBP to report information regarding in-custody deaths to DOJ on an annual basis. Within DOJ, the FDCRP has primary responsibility for collecting, aggregating, analyzing, and reporting that information to Congress. Under the Act, CBP is required to report the death of any person who is:

1. Detained, under arrest, or is in the process of being arrested by any officer of such Federal law enforcement agency (or by any State or local law enforcement officer while participating in and for the purposes of a Federal law enforcement operation, task force, or any other Federal law enforcement capacity carried out by such Federal law enforcement agency); or
2. In route to be incarcerated or detained or is incarcerated or detained at (A) any facility (including any immigration or juvenile facility) pursuant to a contract with such Federal law enforcement agency; (B) any State or local government facility used by such Federal law enforcement agency; or (C) any Federal correctional or Federal pre-trial detention facility located within the United States.

In addition to meeting the above statutory obligations, CBP's interest and intent is to promote accountability and transparency by providing appropriate information to both the Congress and the public regarding CBP-related deaths. Maintaining this trust is, in large part, dependent on timely and sufficient notification to the extent permitted by law and CBP policy. To ensure timely notification and ongoing reporting as appropriate related to the death of an individual in CBP custody, the following notification procedures shall be followed. Uncertainties regarding whether a death is reportable as in-custody will be

determined by the Office of Professional Responsibility (OPR) in consultation with the Office of Chief Counsel (OCC) and the affected component. The reporting matrix below should address most situations, leaving a small number that will need to be adjudicated on a case-by-case basis. OPR will use supplementary guidance promulgated by the FDCRP and consult with OCC, as needed, to reach a final determination in these cases.

DEFINITIONS

REPORTABLE DEATHS

The FDCRP provides detailed guidance to federal agencies regarding which deaths are reportable, as in custody, under the DCRA. CBP will use the criteria set forth below when determining whether a death is reportable under FDCRP. In addition to outlining the most common scenarios encountered by agencies with a patrol function (uses of force, vehicle pursuits, suicides, drug overdoses, etc.), FDCRP guidance also specifies that deaths that occur in an inspection-type environment are reportable when “a decedent's freedom to leave was restricted by federal law enforcement prior to, during, or following an arrest.”^{1 2}

In Custody ³ (Reportable)	Not in Custody (Reportable)	Not Reportable
Subject dies in the process of being physically detained by CBP	Subject dies while attempting to elude CBP but not being actively pursued (including falls from border barriers)	Subject discovered in medical distress and dies in the field or in route to hospital (not in a CBP vehicle)
Subject dies after being detained or arrested or while being escorted to a CBP vehicle	Subject dies before, during, or after primary or outbound inspection at a port of entry (unless referred to secondary or due to use of force)	Subject discovered in medical distress and dies during initial lifesaving efforts at hospital
Subject dies due to vehicle collision, is struck by a vehicle, or dies by any other means while being actively pursued by CBP	Subject dies before, during, or after primary inspection at a USBP checkpoint (unless referred to secondary or due to use of force)	Remains discovered by CBP personnel
Subject dies due to actions of CBP while attempting to detain or arrest subject (e.g., struck by CBP vehicle)	Subject that is not detained or arrested dies while being transported in a CBP-owned vehicle or other conveyance with the sole purpose of obtaining immediate medical care	Discovery of deceased individuals by other agencies
Subject dies while being transported by, or in the custody of, a CBP contractor	Subject dies while processing of import/export paperwork or while paying import/export fees	Deaths resulting from an enforcement action in which CBP personnel did not participate
Subject dies in a CBP holding facility or in route to a CBP holding facility		Subject found deceased by CBP personnel in connection with a search and rescue operation
Subject dies as a result of any use of force by CBP personnel		
Subject dies while undergoing secondary inspection or detained by CBP personnel for any other reason		
Subject dies after being admitted to a medical facility while still in CBP's legal custody ⁴		

¹ The Question Guide: CJ-13A-Arrest-Related Death Incident Report published by the FDCRP defines the Inspection environment as, “Activities conducted while carrying out federally mandated inspection duties, such as inspection of packages or materials transported through locations where the agency has jurisdiction.”

² The FDCRP FAQ (<https://doi-dcra.org/Home/FAQ>) states that a death that occurs, “While the decedent's freedom to leave was restricted by federal law enforcement prior to, during, or following an arrest,” is reportable as an in-custody death.

³ Definitions based on Death in Custody Reporting Act of 2013 (PL 113-242) and Federal Death in Custody Reporting Program guidelines established by USDOL

⁴ Specifically required by H. Rept. 116-458, Department of Homeland Security, Appropriations Bill, 2021. Applies to instances in which the decedent was detained in a CBP facility or injured during a CBP enforcement action prior to their hospitalization.

NOTIFICATION PROCEDURES

IN-CUSTODY DEATHS

In all cases, sensitivity to the interests of the family of the deceased is paramount and all reasonable efforts should be undertaken to notify the family as soon as possible.

Nothing in these procedures should be construed to:

- Prohibit CBP personnel from providing additional notifications of the in-custody death if deemed necessary by senior CBP officials
- Supersede reporting requirements included in the CBP Use of Force Policy or any other relevant policy related to deaths occurring in CBP custody
- Abrogate any requirements under the Privacy Act or the privacy policies of CBP and DHS.

Immediately following the death of a subject in CBP custody, the following procedures will be implemented:

The Sector Chief Patrol Agent, Director of Field Operations, and Air and Marine Operations Regional Executive, for the area of responsibility where the death occurred, will ensure, as expeditiously as possible, that all of the following are done:

1. Notify the OPR and DHS OIG local duty agents
2. Notify headquarters via the relevant Executive Assistant Commissioner (EAC), the Chief of the U.S. Border Patrol, or their designee
3. Report the individual's death as a "significant incident" to the Commissioner's Situation Room in accordance with current reporting requirements and timelines
4. Coordinate with relevant state, local, tribal, and territorial law enforcement entities as appropriate

Upon notification from the Field Office, Sector, or Air or Marine Branch:

The EAC, Chief, or designee will:

1. Provide immediate notification to the Commissioner and Deputy Commissioner.
2. Provide email, telephonic, or in-person notification to:
 - The Office of the Chief Medical Officer (OCMO)
 - The Office of Chief Counsel (OCC)
 - The Office of Public Affairs (OPA)
 - The Office of Congressional Affairs (OCA)
 - The Office of International Affairs (INA)
 - The Office of Professional Responsibility (OPR)
 - The Privacy and Diversity Office (PDO)

- The Office of Intergovernmental Public Liaison (IPL)

OPR will:

Coordinate field investigative activities with other agencies as appropriate and provide a written update to CBP senior leadership, the component, OPA, OCA, OCMO, and OCC as soon as practicable containing verified information regarding the incident. The timeliness of this update will vary depending on the precise circumstances of the death and the time required to obtain validated information but should be close to 24 hours. OPR will also inform the CBP Situation Room of its determination regarding whether the death is in custody.

Within 4 hours of notification from the Field Office, Sector, or Air or Marine Branch:

Notification to CBP leadership:

The EAC or Chief (or their designee) will submit an initial report to CBP senior management including the Office of the Commissioner, OCMO, OPA, OCA, INA, OPR, IPL, OCC, and PDO.

Notification to Consulate:

Once nationality/citizenship has been established, the EAC or Chief (or their designee) will confirm the applicable consulate has been contacted and support offered.

Within 12-24 hours of the death:

Notification to the Secretary and Deputy Secretary:

The Commissioner or designee will notify the Secretary and Deputy Secretary as soon as practicable after receiving the information from the relevant EAC or Chief. Should this information need to be sent before OPR's validated update is available, it should be made clear the information is being provided *as an initial report subject to change*. Updates can be provided, if needed, once the OPR validated update is complete.

Notification to the Department of State:

INA headquarters will provide notification to the Department of State headquarters and the CBP Attaché in the country of the individual's citizenship will provide notification to the Embassy.

Within 24 hours of the death:

Recognizing the need to provide accurate and timely information to CBP stakeholders, notifications and releases should be coordinated with the relevant CBP offices and leadership and should be based on the OPR validated update to the greatest extent possible.

Notification to Congress:

The OCA will provide email notification to the Chair and Ranking Member of the following Committees and Members:

- Senate Judiciary Committee
- House Judiciary Committee
- Senate Judiciary Committee, Subcommittee on Immigration, Citizenship, and Border Safety
- House Judiciary Committee, Subcommittee on Immigration and Citizenship
- Senate Homeland Security and Governmental Affairs Committee
- House Homeland Security Committee
- Senate Appropriations Committee
- House Appropriations Committee
- House and Senate Members who represent the district and state where the death occurred.

Diplomatic Notification:

INA will provide additional telephonic or written notification to the appropriate foreign embassy as appropriate. To the extent practicable, this notification will be issued prior to the public notification by OPA.

Notification to the Media:

In coordination with the field component, subject to applicable privacy restrictions or limitations, OPA will notify the public of an individual's death in custody within one hour after the Congressional notification by issuing a statement to the media and posting the statement on CBP.gov. To the maximum extent possible, this should be based on the OPR validated update or be cleared with OPR and OCC prior to release.

Notification to the DHS Office for Civil Rights and Civil Liberties (CRCL), Non-governmental Organizations (NGOs), and Other Stakeholders:

OPR will notify CRCL with a copy sent to the CBP Privacy and Diversity Office (PDO). PDO, which serves as a liaison between CBP and CRCL regarding civil rights and civil liberties matters, will be responsible for following-up with CRCL as needed to address specific cases.

IPL will provide a copy of the media release to NGOs and other stakeholders, as appropriate.

CBP INVOLVED NON-CUSTODIAL DEATHS

Immediately following a reportable non-custodial death, the following procedures will be implemented:

The Sector Chief Patrol Agent, Director of Field Operations, and Air and Marine Operations Regional Executive, or designee, for the area of responsibility where the death occurred, will ensure, as expeditiously as possible, that the following are done:

1. Notify the OPR and DHS OIG local duty agents
2. Notify headquarters via the relevant Executive Assistant Commissioner (EAC), the Chief of the U.S. Border Patrol, or their designee
3. Report the individual's death as a "significant incident" to the Commissioner's Situation Room in accordance with current reporting requirements and timelines
4. Coordinate with relevant state, local, tribal, and territorial law enforcement entities as appropriate.

Upon notification from the Field Office, Sector, or Air or Marine Branch:

The EAC, Chief, or designee will:

1. Provide immediate notification to the Commissioner and Deputy Commissioner.
2. Provide email, telephonic, or in-person notification to:
 - o The Office of the Chief Medical Officer (OCMO)
 - o The Office of Chief Counsel (OCC)
 - o The Office of Public Affairs (OPA)
 - o The Office of Congressional Affairs (OCA)
 - o The Office of International Affairs (INA)
 - o The Office of Professional Responsibility (OPR)
 - o The Privacy and Diversity Office (PDO)
 - o The Office of Intergovernmental Public Liaison (IPL)

OPR will:

Coordinate field investigative activities with other agencies as appropriate and provide a written update to CBP senior leadership, the component, OCMO, OPA, OCA, and OCC as soon as practicable containing verified information regarding the incident. The timeliness of this update will vary depending on the precise circumstances of the death and the time required to obtain validated information but should be close to 24 hours. OPR will coordinate with the CBP Situation Room to ensure the death is properly categorized as not in-custody.

Within 24 hours of the death:

Recognizing the need to provide accurate and timely information to CBP stakeholders, notifications and releases should be coordinated with the relevant CBP offices and leadership to the greatest extent possible.

Notification to Congress:

The OCA will provide email notification to designated staff members of the House and Senate Appropriations Committees. Additional Congressional notifications may be made on a case-by-case basis at the discretion of OCA.

Diplomatic Notification:

INA will provide additional telephonic or written notification to the appropriate foreign embassy as appropriate. To the extent practicable, this notification will be issued prior to the public notification by OPA.

Notification to the Media:

On a case-by-case basis and in coordination with the field component, subject to applicable privacy restrictions or limitations, OPA may notify the public of a not in custody death related to CBP operations by issuing a statement to the media and posting the statement on CBP.gov. To the maximum extent possible, this should be based on the OPR validated update or be cleared with OPR prior to release.

Notification to the DHS Office for Civil Rights and Civil Liberties (CRCL), Non-governmental Organizations (NGOs), and Other Stakeholders:

OPR will notify CRCL with a copy sent to the PDO. PDO will be responsible for following-up with CRCL as needed to address specific cases.

IPL will provide a copy of the media release to NGOs and other stakeholders, as appropriate.

CASE REVIEW PROCESS

Upon determining an individual died under reportable circumstances, OPR will:

1. Initiate a review to fully document the facts and circumstances surrounding the death including interviewing relevant witnesses, reviewing records, reviewing and preserving video and audio evidence, and obtaining relevant information from medical personnel including autopsy results
2. Ensure agency compliance with relevant rules, regulations, and laws (including the CBP Standards for Transport, Escort, Detention and Search (TEDS))
3. Coordinate its reviews with the Office of the Chief Medical Officer (OCMO) and other investigative agencies
4. Identify any potential gaps in training, policy, or procedure that could mitigate similar incidents in the future
5. To the extent an individual dies in-custody while, or after, being detained in a CBP facility, OPR, in coordination with OCMO, will consult with an independent clinician who will review the facts and circumstances as documented by OPR's review to assess CBP's compliance with TEDS standards.

REPORTING REQUIREMENTS

OPR will track all in-custody deaths and complete the necessary submissions with the DOJ to fulfill CBP's annual reporting obligations under the FDCRP.

OPR, with support from OCMO, will prepare a written report for submission to Congress no later than 30 days after the end of each fiscal year detailing all reportable deaths including summaries of its reviews and compliance with TEDS. In addition, OPR will brief the House and Senate Committees on Appropriations on its findings and associated recommendations for any deaths it investigates.⁵

No Private Right Statement. This is a CBP internal policy statement. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.



JUN 18 2021

TROY A. MILLER
Senior Official Performing the Duties of the Commissioner

⁵ This requirement was set forth in H. Rept. 116-458, *Department of Homeland Security Appropriation Bill, 2021* and requires these actions be taken annually.